

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK STATE RESTAURANT
ASSOCIATION,**

Plaintiff,

- against -

**NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York State Department of Health
and Mental Hygiene,**

Defendants.

No. 2007 Civ. _____

**DECLARATION OF
JULIE HAUGEN**

JULIE HAUGEN hereby declares under penalty of perjury:

1. I am the Nutrition Manager for Burger King Corporation (“BKC”). I have served as BKC Nutrition Manager for more than two years. I earned a masters of science in nutrition science from Bastyr University, located in Seattle, Washington, in 2001. Bastyr University offers graduate and undergraduate study programs in natural health sciences and natural medicine. After receiving my masters degree, I served as the nutrition program manager for the Quinault Indian Nation, an American Indian Tribe in Taholah, Washington, developing and implementing a nutrition program for children and adult Tribe members. I am both a Registered Dietician and a Licensed Dietician.

2. As BKC’s Nutrition Manager, I am an integral part of developing and implementing BKC’s nutrition strategy. I serve as a resource for the company product development teams, suggesting ways to improve the nutrition content of particular foods and to

ensure that the overall menu we offer to customers has a better, more healthful nutritional profile. I am also responsible for enhancing and improving BKC's nutrition information and education program to meet the needs of our customers who are increasingly interested in dietary issues.

BKC's Approach to Providing Nutrition Information

3. BKC has been providing nutrition information to customers for more than ten years. Since I started managing BKC's nutrition program, each year we have provided more extensive nutrition and health information to consumers. Two facts confirm BKC's approach to providing nutrition information to consumers.

4. First, to achieve a healthy diet, consumers must account for several nutritional components while being physically active. While calories play an important role in weight management, most nutritionists agree that overemphasis on one or a few nutrients is unlikely to help consumers properly manage their diet or health. For instance, proper weight management requires controlling both calories consumed and calories expended in physical activity. Many overweight or obese individuals have more health concerns than just weight alone, such as diabetes, high blood pressure, and high cholesterol, all of which can play a role in the development of heart disease. Therefore, BKC seeks to make nutritional information meaningful by placing it in the context of customers' overall dietary needs. This approach is based on principles set forth in the 2005 U.S. Dietary Guidelines, a joint publication of the Department of Health and Human Services and the Department of Agriculture, which provides authoritative advice on proper dietary habits. A copy of the U.S. 2005 Dietary Guidelines is attached to the Appendix at Tab A.

5. Second, the International Food Information Council (IFIC) Foundation has conducted two studies showing that there is disconnect between consumers' general interest in eating healthier foods and controlling their weight, on the one hand, and their state of knowledge about the daily recommended intake of such nutrients, on the other hand. Researchers have found, for example, that nearly ninety percent of those studied could not correctly estimate the recommended number of calories per day for a person of their age and weight. *See* IFIC Foundation Food and Health Survey: Consumer Attitudes toward Food, Nutrition and Health 2006 at 16-17 (copy attached to the Appendix at Tab B); IFIC Foundation 2007 Food and Health Survey: Consumer Attitudes toward Food, Nutrition and Health at 9-10 (copy attached to the Appendix at Tab C).

BKC's Effort to Provide Nutrition Information to Customers

6. Recognizing these facts, BKC has taken several steps to provide consumers with nutrition information and easy-to-use tools which enable them to use that information to manage their daily dietary needs.

7. First, BKC requires that each U.S. Burger King® restaurant post a comprehensive, easy-to-use nutrition poster in a prominent place in the dining area, usually at the end of the queue line. The nutrition poster, which is in full color and measures two feet by three feet, provides extensive nutrition information for all of our core menu items, including: name of the item, portion size (small, medium, large), serving size (in grams), calories, fat, saturated fat, trans fat, cholesterol, sodium, carbohydrates, dietary fiber, sugars, and protein. To assist those customers who are interested in more healthy options, the nutrition poster provides nutrition values of our *Whopper*® sandwiches both with and without mayonnaise, and of our salads with a

choice of dressing. The nutrition poster also lists the ingredients for each menu item for those customers with food allergies.

8. The nutrition poster contains a section entitled “What’s Your Eating Strategy?” subtitled “Stay calorie conscious and eat like a king!” in which we advise consumers on how to use nutrient information to manage their caloric, fat and sodium intake, via the “Quick Nutrition Guide.” The recommendations are based on recognized authorities, such as the American Heart Association and the 2005 U.S. Dietary Guidelines. The “What’s Your Eating Strategy?” section also suggests various menu ideas for main course, side and beverage menu items and offers tips to consumers on Burger King® items that may be prepared in ways that lower their caloric, sodium and fat content. The nutrition poster makes these numbers meaningful by anchoring them to the Present Daily Values based on a 2000 calorie daily intake for these nutrients. The section reminds customers to balance calorie intake with their level of physical activity in order to properly manage their weight.

9. Second, BKC’s website at www.bk.com contains an extensive section on nutrition, receiving over 77,000 visits per month on average. There, customers can access a variety of nutrition information.

a. Customers can download materials containing the nutrition profile of each of BKC’s core menu items, including calories, total fat, saturated fat, trans fat, cholesterol, sodium, carbohydrates, fiber, sugars and protein. These nutrition materials are attached to this Declaration as Exhibit A.

b. Customers can use the interactive “Build A Meal” function where they plan a meal and the website calculates the meal’s nutrition content. The “Build A Meal” site receives 42,000 visitors a month.

c. To give this information context, the website introduces several healthy eating strategies in the “Tools to eat well!” section, a copy of which is attached to this Declaration as Exhibit B. Here, we explain to customers the importance and ease of using MyPyramid.gov (the Department of Agriculture’s interactive internet tool which helps customers follow the 2005 U.S. Dietary Guidelines) to plan their diet. We also remind customers that the key to weight management is maintaining an energy balance through caloric intake and physical exercise. We further suggest that they visit the “Meal Planning” website sections for additional assistance.

d. In the website’s Meal Planning sections, we provide more detailed nutrition planning assistance, depending on each customer’s dietary need or interest in managing a particular nutrient – either calories, fat or carbohydrates. “Watching Calories?” provides information on Burger King® foods that fit into different calorie ranges; “Interested in Lowering the Fat?” gives food choices under 20 grams of fat, and “Counting Carbs” gives food choices that are low in carbs. Copies of these three sections are attached to this Declaration as Exhibit C. These Meal Planning sections provide tips on how to reduce consumption of the particular nutrient and point to Burger King® menu items consistent with this goal. In the “Eating Strategy” section (attached as Exhibit E), we reinforce the “What’s Your Eating Strategy?” information from the in-store nutrition poster, providing customers with a short list of healthier menu items along with their nutrition content and their Percentage Daily Values. This Eating Strategy section also hyperlinks customers to MyPyramid.gov, the 2005 U.S. Dietary Guidelines, and additional federal dietary guidelines for children. BKC is proud to be the first quick service restaurant that links directly to the government’s MyPyramid.gov site.

10. Third, since March 2007, BKC has sponsored Healthy Dining Finder. Healthy Dining Finder is a public interest group created by nutritionists and public health experts. With partial funding by the Centers for Disease Control and Prevention, the group created a website featuring participating restaurants' food items that meet the strict Healthy Dining criteria for nutritious food. Through the Healthy Dining Finder website at healthydiningfinder.com, consumers throughout the country can learn of the healthier food options available at nearby restaurants, along with the food items' corresponding nutritional value. Currently, six of our menu items are listed on the Healthy Dining Finder website. The nutrition section of our website provides a hyperlink to the Healthy Dining Finder website. Our customers are using Healthy Dining Finder, with the Burger King® section receiving 17,000 hits in March 2007 alone. We expect this number to increase as more consumers become aware of the service. All Burger King® restaurants will receive decals to display in their windows that Burger King® restaurants participate in Healthy Dining Finder.

11. Fourth, many Burger King® restaurants have available for consumers full color brochures which provide comprehensive information about the nutritional values of our menu items. Consumers can take the brochures home with them and refer to them as needed. A current brochure is attached as Exhibit D.

12. Fifth, BKC is in the process of providing tray liners containing the complete nutrition profile of our menu: calories, fat, trans fat, cholesterol, sodium, carbohydrates and protein. Through these tray liners, customers have easily accessible information on calories, fat etc. We also suggest on the tray liners that customers visit our website to customize their menu choices through the "Build A Meal" function.

13. Finally, BKC offers customers more nutritious menu options. On its value meals (which are numbered combinations of main course, side dish and beverage and can be ordered by number), customers can, in many U.S. markets, replace French Fries with a side salad at no additional cost. For children's value meals, we offer a side of applesauce instead of French Fries, and milk or apple juice instead of soft drinks. We also offer customers the *BK Veggie®* *Burger* and meal size *Tendergrill™* salads. Customers may order a lower fat version of our *Whopper®* sandwich which omits the mayonnaise.

Objections to Regulation 81.50

14. BKC strongly disagrees with New York City's regulation which requires it to isolate and post calorie information on menu boards in its restaurants. As most nutritionists know, overemphasis on any one nutrient such as calories can interfere with consumers obtaining a healthy, varied diet. Rather, BKC believes that nutrition information must be provided within the broader context of what it means to have a healthy diet, with an emphasis on consumers acquiring an energy balance while moderating intake of nutrients such as sodium, fats, trans fats and cholesterol. This holistic approach, well-established among nutrition experts, is a main focus of the 2005 U.S. Dietary Guidelines. It also guides how BKC and Burger King® restaurants currently provide nutrition information to customers.

15. While calories are important, we disagree with the message that the New York regulation requires us to communicate to our customers. Limiting the information on menu boards to a single nutrient as a guideline to the healthfulness of a particular food is misleading and can cause consumers to make the wrong food choice for themselves. Some higher calorie food items have higher nutritional value than some lower calorie foods (*e.g.*, 100% fruit juice or 1% low fat milk vs. diet soda). People need to consume a range of nutrients each day in order to

achieve a healthy and balanced diet. Some low calorie foods have lower nutritional value than other foods with higher calories. By focusing solely on calories on the menu boards, the New York regulation will cause some consumers to select foods that are of lower nutritional value. Consumers need a complete nutritional profile for food items in order to make the best selection.

16. Different consumers have different health and dietary needs. For example, consumers who are diabetic need to limit their carbohydrate intake. Focusing their attention exclusively on calories at the point of purchase -- as the New York regulation would require Burger King® restaurants to do -- could lead them to make a food choice that is wrong for them because it could lead them to select a food based on calorie count, rather than on carbohydrate count, which is the main nutrient that should be of concern to them.

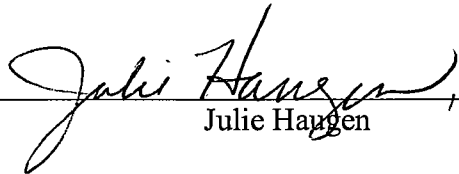
17. Requiring BKC to publish the calorie count of foods alone and in isolation on the menu boards will undermine our carefully developed program to communicate nutrition information to our customers. Listing the calories on the menu boards will detract attention from the means of communication BKC has chosen to convey its nutritional message. If consumers in our restaurants see a single nutrient number for calories next to a menu item on the menu board, they will read that number and will pay less attention -- or no attention at all -- to the nutrition posters which list comprehensive nutrition information for each menu item. Customers will attribute to BKC the message that calories are the most important nutrient and that a single calorie number is all they need to know. While this may be the City's desired message, it is not the message that BKC wants to convey or with which it agrees. It is an oversimplified message, and one that does not have any sound scientific basis.

18. In conclusion, we strongly oppose the New York City regulation. We think it overemphasizes the significance of calories in achieving a healthy and balanced diet. We do not

agree with the message it will force us to send to our customers. We believe it will undermine the nutritional message that we have carefully developed and chosen to send to our customers.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on June 13, 2007

 MS, RD, LD
Julie Haugen